

# **EXHIBIT D**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

and

OSAGE MINERALS COUNCIL,

Intervenor-Plaintiff,

vs. No. 14-CV-704-GFK-JFG

OSAGE WIND, LLC; ENEL, KANSAS,  
LLC; and ENEL GREEN POWER  
NORTH AMERICA, INC.,

Defendants.

12 VIDEO ZOOM DEPOSITION OF CRAIG MAZUROWSKI  
TAKEN ON BEHALF OF THE PLAINTIFF  
ON JUNE 7, 2021 AT 10:03 AM  
13 REPORTER PRESENT IN OKLAHOMA CITY, OKLAHOMA  
APPEARANCES

14 On behalf of the PLAINTIFF:  
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15 Kathy McClanahan  
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23 (Appearances continued on the following page.)

24 VIDEOTAPED BY: Kaleb Pinalto

25 REPORTED BY: Jody Graham, CSR, RPR, RMR, CRR

<p>Page 2</p> <p>1 APPEARANCES (Continued)</p> <p>2 On behalf of the DEFENDANTS:</p> <p>3 Sarah M. Stevenson</p> <p>4 Lynn Slade</p> <p>5 MODRALL, SPERLING, ROEHL, HARRIS &amp; SISK, P.A.</p> <p>6 500 Fourth Street NW, Suite 1000</p> <p>7 Albuquerque, New Mexico 87103</p> <p>8 505.848.1800</p> <p>9 sarah.stevenson@modrall.com</p> <p>10 On behalf of the WITNESS:</p> <p>11 Roy Rodabaugh</p> <p>12 GENERAL COUNSEL, IEA CONSTRUCTORS</p> <p>13 6325 Digital Way, Suite 460</p> <p>14 Indianapolis, Indiana 48278</p> <p>15 800.688.3775</p> <p>16 ALSO PRESENT: Michelle Hammock, Christina Watson</p>	<p>Page 4</p> <p>1 VIDEOGRAPHER: This is the deposition of</p> <p>2 Craig Mazurowski in the matter of Osage Minerals</p> <p>3 Council versus Osage Wind. Today is June 7th, 2021,</p> <p>4 and we're on the record at 10:03 a.m. Central Time.</p> <p>5 Will counsel, please, state their appearances for the</p> <p>6 record.</p> <p>7 MR. ASHWORTH: Stuart Ashworth on behalf of</p> <p>8 the US Attorney's office. I also have Kathy</p> <p>9 McClanahan, an attorney for the US Attorney's office.</p> <p>10 We also have Christina Watson and Michelle Hammock who</p> <p>11 are paralegals in our office.</p> <p>12 MS. NAGLE: On behalf of the Osage Minerals</p> <p>13 Council, Mary Kathryn Nagle of Pipestem &amp; Nagle Law.</p> <p>14 And with me today is my colleague Abi Fain.</p> <p>15 MS. STEVENSON: On behalf of defendants</p> <p>16 Osage Wind, LLC; Enel Kansas, LLC; and Enel Green</p> <p>17 Power North America, Inc., Sarah Stevenson of the</p> <p>18 Modrall Sperling law firm. Also attending today is my</p> <p>19 colleague Lynn Slade, also of Modrall Sperling.</p> <p>20 MR. RODABAUGH: And you also have Roy</p> <p>21 Rodabaugh. I'm attorney and counsel for IEA</p> <p>22 Contractors, LLC, which is formerly known as IEA</p> <p>23 Renewable Energies, Inc.</p> <p>24 VIDEOGRAPHER: Okay. The court reporter</p> <p>25 will now swear the witness.</p>
<p>Page 3</p> <p>1 INDEX</p> <p>2 Page</p> <p>3 CRAIG MAZUROWSKI 5</p> <p>4 Direct Examination by Mr. Ashworth 5</p> <p>5 Cross Examination by Ms. Nagle 92</p> <p>6 Cross Examination by Ms. Stevenson 150</p> <p>7 Redirect Examination by Mr. Ashworth 153</p> <p>8 EXHIBITS</p> <p>9 Exhibit Description</p> <p>10 37 Osage Wind 024749-024751 123</p> <p>11 44 LinkedIn Page of C. Mazurowski 15</p> <p>12 45 Key Personnel Chart 19</p> <p>13 46 Scope of Work 33</p> <p>14 47 Technical Specifications 43</p> <p>15 48 Change Order dated 5-28-2012 67</p> <p>16 49 Change Order dated 5-12-2014 68</p> <p>17 50 Purchase Order to Apac dated 80</p> <p>18 9-16-2014</p> <p>19 51 Purchase Order dated 11-19-2013 83</p> <p>20 52 Contract dated 4-11-2013 103</p> <p>21 53 Email dated 7-9-2014 from R. Ritter 130</p> <p>22 to Various Recipients - IEA00227119</p> <p>23 54 Email dated 9-3-2014 between C. 139</p> <p>24 Mazurowski and B. Moskaluk</p> <p>25 55 Email dated 9-17-14 from R. Ritter 141</p> <p>to C. Hanson - Osage Wind 019903.1</p> <p>56 Email from B. Moskaluk to G. 145</p> <p>DiMarzio - Osage Wind-018666</p> <p>57 Email dated 11-18-2014 from C. 148</p> <p>Mazurowski to C. Hanson - Osage Wind</p> <p>024924</p> <p>58 Email dated 6-3-2015 from R. Gardner 151</p> <p>to C. Mazurowski - Osage Wind 388335</p> <p>21 STIPULATIONS</p> <p>22 It is stipulated that the deposition of</p> <p>23 CRAIG MAZUROWSKI may be taken pursuant to Notice and</p> <p>24 Federal Rules of Civil Procedure on JUNE 7, 2021,</p> <p>25 before Jody Graham, CSR, RPR, RMR, CRR.</p>	<p>Page 5</p> <p>1 CRAIG MAZUROWSKI,</p> <p>2 being first duly sworn, was examined and testified as</p> <p>3 follows, to wit:</p> <p>4 DIRECT EXAMINATION</p> <p>5 BY MR. ASHWORTH:</p> <p>6 Q Sir, my name is Stuart Ashworth, and I</p> <p>7 represent the US. government in this lawsuit. I</p> <p>8 appreciate your time, and I'll try to be as quickly as</p> <p>9 possible with your deposition. But can you, please,</p> <p>10 state your full name for the record?</p> <p>11 A Craig Mazurowski.</p> <p>12 Q What's your middle name?</p> <p>13 A Benjamin.</p> <p>14 Q Benjamin? Have you gone by any other names</p> <p>15 other than that?</p> <p>16 A No.</p> <p>17 Q Do you mind if I call you Craig during your</p> <p>18 deposition?</p> <p>19 A No problem.</p> <p>20 Q Okay. Just because your last name, I would</p> <p>21 hate to butcher it up. Mazurowski. Am I kind of saying</p> <p>22 that correctly?</p> <p>23 A Yeah. You're dead on.</p> <p>24 Q Oh, perfect. How many times have you given</p> <p>25 a deposition before?</p>

<p style="text-align: right;">Page 134</p> <p>1 <b>Q Who all would have been involved in that</b>  2 <b>collaborative effort?</b>  3 A Probably the people you see on this email  4 with the engineer of record and Enel.  5 <b>Q Okay. Were you a part of those discussions?</b>  6 A Looks like I was, but I don't remember.  7 <b>Q So moving up, it looks like Ron Ritter has a</b>  8 <b>response here to Bryan also on July 9th, 2014. He</b>  9 <b>writes, "I understand that we can't mine from one side</b>  10 <b>of the project and transport to the other; however, in</b>  11 <b>the general vicinity of the foundation within the 192'</b>  12 <b>maximum radius of the cultural boundaries, we intend</b>  13 <b>to balance the site. The process, along with the</b>  14 <b>excavation of the foundation itself, will develop a</b>  15 <b>vast majority of the materials we need for fill and</b>  16 <b>for associated sloping; however, should we need to</b>  17 <b>import fill, the quarry in Burbank from which we are</b>  18 <b>deriving our access road aggregate can supply us with</b>  19 <b>off-site material."</b>  20 <b>Was it your understanding that mining on the</b>  21 <b>Osage Wind farm project there was acceptable so long</b>  22 <b>as it was not transported away from the location where</b>  23 <b>it was mined?</b>  24 MS. STEVENSON: Object to form.  25 THE WITNESS: We didn't mine.</p>	<p style="text-align: right;">Page 136</p> <p>1 A Well, generally, you know, we have an area  2 that we stay within. And anything outside of that  3 is -- which we can't go outside the design area.  4 <b>Q What is your boss Ron Ritter here referring</b>  5 <b>to when he talks about sloping? What's sloping?</b>  6 A You know, to make a proper slope. Because  7 you've got to be within a certain grade --  8 <b>Q Uh-huh.</b>  9 A -- for it to be approved, you know what I  10 mean. Like -- like on the side of a hill, you know,  11 you don't want -- driving down the highway and having  12 dirt fall on top of you. So it's kind of the same  13 thing. You slope it back and...  14 <b>Q Uh-huh.</b>  15 A So the approved grade, I guess, is probably  16 the best way to define it.  17 <b>Q And what materials would typically be used</b>  18 <b>for fill-in sloping?</b>  19 A What would be used for what?  20 <b>Q What materials would typically be used for</b>  21 <b>fill-in sloping?</b>  22 A The area, local native material.  23 <b>Q Okay. Let's see. So I know you said</b>  24 <b>earlier that you would have been a part of the</b>  25 <b>collaboration that resulted in the original</b></p>
<p style="text-align: right;">Page 135</p> <p>1 <b>Q (BY MS. NAGLE) So in your opinion</b>  2 <b>nothing -- none of the activities you undertook</b>  3 <b>constitutes mining?</b>  4 A In my opinion, no.  5 <b>Q Okay. And so what have you relied on to</b>  6 <b>form that opinion?</b>  7 A Just general understanding of mining. We  8 were excavating and doing civil work, which...  9 <b>Q Uh-huh. And was your understanding of what</b>  10 <b>constitutes mining informed by Enel or EGP NA?</b>  11 A Looked like, you know, based on what you're  12 showing me, there were some concerns.  13 <b>Q Uh-huh. And would you agree that it looks</b>  14 <b>like here that Enel and EGP NA shared those concerns</b>  15 <b>with you; is that correct?</b>  16 MS. STEVENSON: Object to form.  17 THE WITNESS: That's how it seems.  18 <b>Q (BY MS. NAGLE) Do you have an</b>  19 <b>understanding of what is meant by the reference to</b>  20 <b>the cultural boundaries here in this email from Ron</b>  21 <b>Ritter?</b>  22 A Not specifically. I believe the record  23 drawings define it, if I'm not mistaken.  24 <b>Q Okay. So you don't know what cultural</b>  25 <b>boundaries are; is that correct?</b></p>	<p style="text-align: right;">Page 137</p> <p>1 <b>construction plan. Do you remember when that original</b>  2 <b>construction plan was finished or complete?</b>  3 A You would have to look on the drawings.  4 Should be dated.  5 <b>Q Okay. So you don't recall right now?</b>  6 A No.  7 <b>Q Okay. So if we keep going up in this email</b>  8 <b>chain, we see Giuseppe responds, and then we've got</b>  9 <b>another response from Ron Ritter. This is also dated</b>  10 <b>July 9th to Giuseppe, and you're copied here on this.</b>  11 <b>He -- Ron Ritter -- I'm just reading a few</b>  12 <b>of the relevant lines that -- specifically he says,</b>  13 <b>"It would not be practical for us to perform this work</b>  14 <b>with imported fill at no extra cost if the original</b>  15 <b>scope was for us to be allowed to mine on-site fill."</b>  16 <b>What is your understanding of what Ron</b>  17 <b>Ritter meant by this sentence?</b>  18 MS. STEVENSON: Object to form.  19 THE WITNESS: Balancing the site.  20 <b>Q (BY MS. NAGLE) So was he informing Enel</b>  21 <b>and EGP NA that in order to balance the site with</b>  22 <b>materials off-site, it would be more expensive than</b>  23 <b>the budget IEA and Enel had initially approved for</b>  24 <b>the project?</b>  25 MS. STEVENSON: Object to form.</p>